

§§ 1980.7–1980.10

agency under Public Law 103-354 financial assistance with the Economic Development Administration (EDA), Department of Housing and Urban Development (HUD), Small Business Administration (SBA), other Federal and State agencies, and private and quasi-public financial institutions.

Lender. The person or organization making and servicing the loan or advancing and servicing the line of credit which is guaranteed under the provisions of the appropriate subpart. The lender is also the party requesting a guarantee.

Lender's Agreement (Form RD 449-35). The signed agreement between Rural Development and the lender setting forth the lender's loan responsibilities when the Loan Note Guarantee is issued.

Loan Note Guarantee (Form FmHA or its successor agency under Public Law 103-354 449-34). The signed commitment issued by FmHA or its successor agency under Public Law 103-354 setting forth the terms and conditions of the guarantee.

Market value. The amount for which property would sell for its highest and best use at voluntary sale.

NOTE: An evidence of debt. In those instances where FmHA or its successor agency under Public Law 103-354 makes an insured loan or guarantees a bond issue, "note" shall also be construed to include "Bond" or other evidence of indebtedness where appropriate.

Principals of borrowers. Includes owners, officers, directors, entities and others directly involved in the operation and management of a business.

Transfer and assumption. The conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of the loan in return for the assuming party's binding promise to pay the debt outstanding. In relation to transfer and assumption cases, where appropriate, "liquidation" and "loan" shall be construed to mean "transfer and assumption," "promissory note" shall be construed to mean "assumption agreement," and "borrower" shall be construed to mean "assuming party" or "transferee."

(b) *Abbreviations.* The following abbreviations are applicable:

CP— Community Programs.

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EDA— Economic Development Administration.

EPA— Environmental Protection Agency.

EIS— Environmental Impact Statement.

FmHA or its successor agency under Public Law 103-354— Farmers Home Administration or its successor agency under Public Law 103-354.

FDAA— Federal Disaster Assistance Administration.

FIA— Federal Insurance Administration.

FMI— Forms Manual Insert.

OGC— Office of the General Counsel.

SBA— Small Business Administration.

SBIC— Small Business Investment Company.

USDA— United States Department of Agriculture.

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§§ 1980.7–1980.10 [Reserved]

§ 1980.11 Full faith and credit.

The Loan Note Guarantee constitutes obligations supported by the full faith and credit of the United States and are incontestable except for fraud or misrepresentation of which the lender or holder has actual knowledge at the time it becomes such lender or holder or which lender or holder participates in or condones. Generally, any Loan Note Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void. The guarantee and right to require purchase will be directly enforceable by holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the Loan Note Guarantee by the lender. The Loan Note Guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing or failure to obtain the required security regardless of the time at which the Agency acquires knowledge of the foregoing.

Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid. The Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder shall not cover interest accruing 90 days after the holder has demanded repurchase by the lender, nor shall the Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder cover interest accruing 90 days after the lender or the Agency has requested the holder to surrender the evidence of debt for repurchase.

[60 FR 53255, Oct. 13, 1995, as amended at 64 FR 7402, Feb. 12, 1999]

§ 1980.12 [Reserved]

§ 1980.13 Eligible lenders.

(a) *Local lenders.* Local lenders may participate by using the various sources of capital and segments of the money market to meet the necessary financing requirement for guaranteed loan programs. Except in paragraphs (a)(1) and (2) this section, the Agency or its successor agency under Public Law 103-354 will require that a local lender be involved for each project. A local lender is a lender in or near a community where the project is or will be located who routinely provides loan services to such community. Although the project may involve other lenders, investors, or packagers, the local lender will be the lead lender and the lender for purposes of these regulations responsible for servicing and liquidation (if necessary) of the loan. The lender may use agents, correspondents, branches, financial experts, or other institutions or persons to provide expertise to assist in carrying out its responsibilities. The Agency or its successor agency under Public Law 103-354 will use the lender as the point of contact for the administration of the program. The Agency or its successor agency under Public Law 103-354 may

also permit a lender to be the lender for the loan without being local if:

(1) The lender normally makes loans in the region or geographic location in which the applicant's project being financed is located; or

(2) The lender has specific expertise in loans for the proposed project and provides evidence of such expertise to the satisfaction of the Agency or its successor agency under Public Law 103-354.

(b) *An eligible lender is:* Any Federal or State chartered bank, Farm Credit Bank, other Farm Credit System institution with direct lending authority, Bank for Cooperatives, Savings and Loan Association, Building and Loan Association, or mortgage company that is part of a bank-holding company. These entities must be subject to credit examination and supervision by either an agency of the United States or a State. Eligible lenders may also include credit unions that are subject to credit examination and supervision by either the National Credit Union Administration or a State agency or an insurance company that is regulated by a State or National insurance regulatory agency. Only those lenders listed in this paragraph are eligible to make and service guaranteed loans, and such lenders must be in good standing with their licensing authority and have met licensing, loan making, loan servicing, and other requirements of the State in which the collateral will be located and the loan making and loan servicing office requirements in paragraph (b)(3) of this section. A lender must have the capability to adequately service the loan for which a guarantee is requested.

(1) *Participation.* Lenders who are not eligible lenders are not barred from participating in loans made by eligible lenders.

(2) *Lender notification.* Each lender will inform the Agency or its successor agency under Public Law 103-354 whether it qualifies for eligibility under this section and which agency or authority, if any, supervises such lender. This information will be furnished to FmHA or its successor agency under Public Law 103-354 with such proofs as FmHA or its successor agency under Public Law 103-354 may require.